



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 221130-0256]

RIN 0648-BL29

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Harvest Levels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this proposed rule would increase catch levels for vermilion snapper in the Gulf of Mexico (Gulf). The purpose of this proposed rule is to prevent overfishing of Gulf vermilion snapper and to achieve optimum yield (OY).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2022-0099" by either of the

following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2022-0099", in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the

Southeast Regional Office website at
https://www.fisheries.noaa.gov/action/modification-gulf-mexico-vermilion-snapper-overfishing-limit-acceptable-biological-catch-and?check_logged_in=1.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes vermilion snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights described in this proposed rule are in round weight.

In 2012, the Generic Annual Catch Limits and Accountability Measures Amendment (76 FR 82044, December

29, 2011) for the Gulf established catch limits for vermilion snapper including the overfishing limit (OFL), acceptable biological catch (ABC), and annual catch limit (ACL). Amendment 47 to the FMP (83 FR 22210, May 14, 2018) specified the proxy for maximum sustainable yield (MSY) as the yield when fishing at a mortality rate corresponding to 30 percent spawning potential ratio ($F_{30\%}$ SPR) and decreased the vermilion snapper OFL, ABC, and ACL based on the results of the 2016 Southeast Data Assessment Review (SEDAR) stock assessment (SEDAR 45), and the recommendations of the Council's Scientific and Statistical Committee (SSC). The SSC recommended a declining OFL derived from fishing at the MSY proxy. The OFL for 2021 and beyond specified in Amendment 47 is 3,490,000 lb (1,583,037 kg). The SSC also provided two recommendations for ABC: one derived from fishing at 75% of the MSY proxy, which declined from 2017 through 2021, and one derived using the average of the 2017-2021 ABCs, which resulted in a constant ABC. The Council chose to adopt the constant catch ABC of 3,110,000 lb (1,410,672 kg), and set the ACL equal to the ABC. Vermilion snapper annual landings have been less than this ACL since the implementation of the stock ACL in 2012, with the exception of 2018 when it was exceeded by 3 percent.

In 2020, a new assessment (SEDAR 67) was completed for vermilion snapper using data through the 2017 fishing year.

The SEDAR 67 results indicate the stock is not overfished and not experiencing overfishing. SEDAR 67 included new data sources, including historical recreational catch and effort data adjusted to be consistent with the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES). MRIP transitioned from the legacy Coastal Household Telephone Survey (CHTS) to the new FES mail survey. The FES was launched in 2015, and replaced the CHTS in 2018. Both survey methods collect data needed to estimate marine recreational fishing effort by private anglers on the Atlantic and Gulf coasts. The CHTS used random-digit dialing of homes in coastal counties to contact fishermen. The new mail-based FES uses fishing license and registration information as one way to identify and contact fishermen (supplemented with data from the U.S. Postal Service). MRIP-FES landings estimates are generally greater than those generated by MRIP-CHTS and NMFS developed a calibration model to allow estimates produced by either survey to be adjusted to be consistent with the estimates produced by the other survey.

To determine how inclusion of FES-adjusted landings estimates in SEDAR 67 impacted the catch projections for vermilion snapper, the previously accepted assessment model used in SEDAR 45 was updated using the FES data. The same 5-year (2017-2021) average used to set the current ABC was applied to the revised SEDAR 45 projections. This resulted

in an FES-based OFL estimate of 6,760,000 lb (3,066,284 kg), which is almost double the current OFL of 3,580,000 lb (1,623,861 kg). Thus, using FES landings estimates in the SEDAR 45 model indicates that the OFL would have been much higher had the FES data been available at the time the previous assessment was completed.

The SSC reviewed SEDAR 67, agreed that vermilion snapper is not overfished or undergoing overfishing, and reviewed the SEDAR 67 projections. Due to the uncertainty in the SEDAR 67 assessment and recent recruitment, the SSC determined that the catch levels should be based on the average of the projections from 2021-2025, and recommended an increase in the OFL to 8,600,000 lb (3,900,894 kg) and an increase in the ABC to 7,270,000 lb (3,297,617 kg).

The Council's Reef Fish Advisory Panel (AP) reviewed the SSC recommendations and expressed concerns about setting the ACL equal to the ABC, noting that recent landings have been relatively low. Using MRIP-FES estimates, recreational landings from 2012 through 2020 have generally been below 4,000,000 lb (1,814,369 kg), with the highest landings occurring in 2018 at approximately 4,380,000 lb (1,986,735 kg). The AP recommended that the stock ACL be set at 75 percent of the ABC and the Council agreed with the AP's recommendation. Based on the recommendations from the SSC and the AP the Council chose to update the catch limits and approved the framework

action at its January 2022 meeting.

Management Measures Contained in this Proposed Rule

If implemented, this proposed rule would revise the ACL for the Gulf vermilion snapper stock. The current stock ACL for Gulf vermilion snapper is 3.11 million lb (1.41 million kg), is equal to the ABC, and is based on the results of SEDAR 45, which used data from MRIP-CHTS. This proposed rule would increase the total ACL for Gulf vermilion snapper from 3.11 million lb (1.41 million kg) to 5,452,500 lb (2,473,212 kg). The proposed ACL is based on SEDAR 67, which used MRIP-FES recreational landing estimates and is equal to 75 percent of the ABC as recommended by the Council's AP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this

proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would apply to all federally-permitted commercial vessels, federally-permitted charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest vermilion snapper in Federal waters of the Gulf. Although the rule and the framework action would apply to for-hire vessels, it would not be expected to have any direct effects on these entities. For-hire vessels sell fishing services to recreational anglers. The proposed changes to the vermilion snapper management measures would not directly alter the services sold by these vessels. Any change in demand for these fishing services, and associated economic effects, as a result of this proposed rule would be a consequence of a change in anglers' behavior, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA. For-hire captains and crew are permitted to retain vermilion snapper under the recreational bag limit;

however, they are not permitted to sell these fish. As such, for-hire captains and crew are only affected as recreational anglers. The RFA does not consider recreational anglers to be small entities, so they are also outside the scope of this analysis (5 U.S.C. 603). Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)-(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions. In summary, only the impacts on commercial vessels will be discussed.

As of December 21, 2021, there were 747 valid or renewable limited access commercial reef fish permits. A renewable permit is an expired limited access permit that cannot be actively fished, but can be renewed for up to 1 year after expiration. On average from 2015 through 2019, there were 369 federally-permitted commercial vessels each year with reported landings of vermilion snapper in the Gulf. Their average annual vessel-level gross revenue from all species for 2015 through 2019 was approximately \$156,000 (2020 dollars) and vermilion snapper accounted for approximately 7 percent of this revenue. For vessels that harvest reef fish species in the Gulf, NMFS estimates that economic profits are equivalent to 34 percent of annual gross revenue, on average. The maximum annual revenue from all species reported by a single one of the commercial vessels that landed Gulf vermilion snapper from 2015

through 2019 was approximately \$2.4 million (2020 dollars).

For RFA purposes only, the NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would modify the Gulf vermilion snapper stock ACL based on the recommendation of the Gulf Council's SSC and AP. The ACL would be set at 75 percent of the ABC or 5,452,500 lb (2,473,212 kg). This value is not directly comparable to the current ACL of 3,110,000 lb (1,410,000 kg) because the current ACL is based on MRIP-CHTS data for the recreational sector; whereas, the proposed ACL is based on newer MRIP-FES data. It is not possible to distinguish the portion of the increase to the vermilion snapper ACL due to the conversion from MRIP-CHTS to MRIP-FES units from the portion attributable to

improvements in the health of the vermilion snapper stock. Therefore, economic effects that would be expected to result from this proposed action cannot be quantified. Relative to the status quo, an increased stock ACL for vermilion snapper would be expected to afford additional fishing opportunities to the commercial sector, thereby potentially increasing ex-vessel revenue and profits. Such effects would only materialize if the commercial sector is able to increase landings relative to status quo landings.

In summary, the information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf, Reef fish, Vermilion snapper.

Dated: December 1, 2022.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.41, revise the last sentence of paragraph (j) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(j) * * * The stock ACL for vermilion snapper is 5,452,500 lb (2,473,212 kg), round weight.

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